

IN THE CIRCUIT COURT OF LAMAR COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

FILED

VERSUS

LAMAR
COUNTY

APR 12 2012

CIRCUIT
CLERK

CAUSE NO.: ^{2009K}~~K2009~~-187H

NINA BUCKHALTER

Le Sue Wilson

MOTION TO DISMISS

COMES NOW, [REDACTED] by and through counsel, and files this, her Motion to Dismiss in this cause. In support of her motion, the Defendant would show the following to wit:

The Defendant is alleged to have killed her unborn child by culpable negligence, and is indicted for the crime of manslaughter pursuant to Miss. Code Ann. § 97-3-47. The state's position appears to be that the defendant ingested drugs during her pregnancy, and that those drugs were a contributing cause of the death of the defendant's unborn child. The statute at issue provides:

Every other killing of a human being by the act, procurement, or culpable negligence of another, and without authority of law, not provided for in this title, shall be manslaughter.

Statutory Construction

The language of the statute refers to the killing of a human being by another, but does not specifically reference death caused by a pregnant mother of her unborn child. It is not believed to be genuinely disputed that the Mississippi legislature has attempted, on numerous occasions in the past, to

criminalize drug usage by pregnant mothers. It is also believed that none of those efforts by the legislature have resulted in enacted legislation. In fact, the policy of this state has been to not prosecute mothers for miscarriages, stillbirths, or other abortions. **See**, Miss. Code Ann. § 41-41-73 which reads in part:

(1) Any physician who knowingly performs a partial-birth abortion and thereby kills a human fetus shall be guilty of a felony and, upon conviction thereof, shall be fined not more than Twenty-five Thousand Dollars (\$25,000.00) or imprisoned in the State Penitentiary for not more than two (2) years, or both...

(4) A woman upon whom a partial birth abortion is performed may not be prosecuted under this section for conspiracy to violate this section.

See also, Miss. Code Ann. § 41-41-45 which reads in part:

(4) Any person, **except the pregnant woman**, who purposefully, knowingly or recklessly performs or attempts to perform or induce an abortion in the State of Mississippi, except in the case where necessary for the preservation of the mother's life or where the pregnancy was caused by rape, upon conviction, shall be punished by imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than ten (10) years. (emphasis added)

A reading of the above referenced statutes clearly indicates that the policy of the State of Mississippi is that pregnant women are not to be prosecuted for their own acts that may result in miscarriage, stillbirth, or abortion. It is anticipated that the state will argue that the manslaughter statute at issue here references death caused by "another", and that the defendant is "another" in relation to the unborn child. While the thought of a

mother not protecting her body (and her unborn child) by ingesting drugs during her pregnancy is extremely disturbing, it is important to recognize that the legislature has attempted to criminalize such conduct and, in fact, has attempted to deem it manslaughter, but has not been successful. The statute at issue here was enacted prior to several attempts by the legislature to enact legislation prohibiting the ingestion of drugs by pregnant women. It stands to reason that the legislature would not attempt to enact legislation to prohibit conduct that is already prohibited. Also, the defendant would observe that the statute does not specifically reference actions by the mother against her own body or her unborn child. This fact coupled with the legislature's previous efforts, gives rise to ambiguity with respect to the statute's meaning. The Supreme Court of Mississippi has held, "It is bedrock law in Mississippi that criminal statutes are to be strictly construed against the State and liberally in favor of the accused. *McLamb v. State*, 456 So.2d 743, 745 (Miss.1984). To the extent the statute at issue is ambiguous, such ambiguity must be resolved against the state and in favor of the defendant. In sum, the statute at issue in this cause was not intended to result in the prosecution of a mother for acts that result in miscarriage, stillbirth, or abortion, but was clearly enacted to criminalize acts by *third parties* that would impart harm to mothers and their unborn children. For this

reason the indictment in this cause should be dismissed with prejudice.

Constitutionality

As the statute does not define who "another" is, and does not specifically reference acts by a pregnant mother that result in the death of her unborn child, the statute does not provide sufficient notice to a pregnant mother, and any prosecution for such acts would violate the right of due process afforded defendants under the United States and Mississippi Constitutions.

Additionally, the statute is void for vagueness, "if it fails to provide the kind of notice that will enable ordinary people to understand what conduct it prohibits..." *City of Chicago v. Morales*, 527 U.S. 41 (1999). It is important to note that the state is prosecuting this defendant for "culpable negligence" manslaughter. This raises the legitimate question, "What activities by a pregnant mother constitute culpable negligence?". If a mother drinks during her pregnancy, or smokes, or is overweight, or stands too long, or fails to take prenatal vitamins, or drives negligently and wrecks, and such conduct results in a miscarriage, is the mother subject to prosecution for culpable negligence manslaughter? The defendant believes this question cannot be answered after a plain reading of the statute, and in the light of the legislature's previous efforts referenced herein. That this question cannot be answered

is a strong indicator that the statute is unconstitutionally vague, and should not be construed to allow prosecution of this defendant under the state's asserted set of facts and circumstances in this case.

Similarly, the state's apparent construction of the statute at issue allows for the possibility of many other unintended consequences. Specifically, such a construction may cause a mother to seek an abortion that she might not otherwise have sought for fear that her abusive drug use due to addiction could result in a stillbirth or miscarriage, and result in her being prosecuted. This would be a terribly undesirable result, likely violate the public policy of this state, and would evince an interference with a mother's right to carry a child to term. To the extent the statute interferes with a mother's right to carry a child to term, it implicates the Constitutional right to privacy. ***See, Planned Parenthood v. Casey***, 505 U.S. 833 (1992). It is important to keep in mind that this defendant could have intentionally sought an abortion, which would have been an intentional act to terminate her pregnancy, and would not be subject to prosecution. An interpretation of the statute at issue consistent with that urged by the state could make this a more likely outcome. A more realistic outcome is that a pregnant mother might not seek prenatal care for fear that her drug addiction/usage will be discovered, and that she will be

prosecuted. Either outcome would not be in the interest of any mother, unborn child , or the state, and therefore the state cannot demonstrate, rationally, the advancement of any legitimate state interest that would justify an interference with a mother's right to try and carry a child to term. In other words, if the statute functions the way the state apparently believes that it does, it violates the constitutional rights of the defendant, and should not be allowed to be used a basis for prosecuting the defendant.

For all the reasons mentioned herein, the defendant urges this honorable court to dismiss the indictment in this cause with prejudice.

WHEREFORE, PREMISES CONSIDERED, the Defendant respectfully prays that her motion be granted, and that this court dismiss the indictment in this cause with prejudice.

Respectfully Submitted,



K. C. Hightower

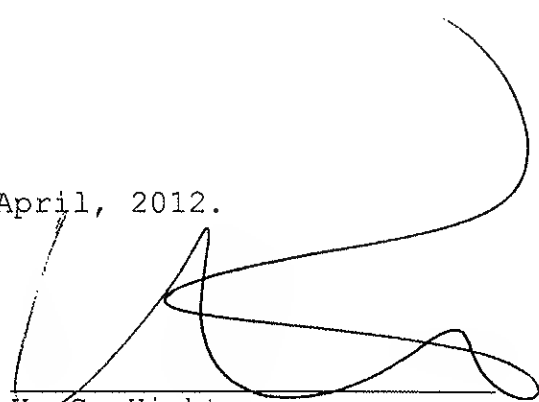
Attorney for Defendant

CERTIFICATE OF SERVICE

I, K. C. Hightower, certify that I have this day emailed a copy of the foregoing Motion to Dismiss to:

Honorable Doug Miller.
dmiller@da15thdistrict.org

So Certified this, the 10st day of April, 2012.



K. C. Hightower

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IN THE CIRCUIT COURT OF LAMAR COUNTY, MISSISSIPPI

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LAMAR COUNTY APR 13 2012 CIRCUIT CLERK

VERSUS

CAUSE NO. 2009K-187H

NINA R. BUCKHALTER

*Lea Wilson***ANSWER TO MOTION TO DISMISS**

COMES NOW, the State of Mississippi by and through the District Attorney's Office and files this their Answer to the Motion to Dismiss in this Cause. In support of their Motion the State would show this Honorable Court the following to wit:

The Defendant has been indicted for Manslaughter in this Cause for ingesting illegal drugs during her pregnancy which resulted in the death of Hayley Jade Buckhalter, an unborn child. The indictment alleges that;

Nina R. Buckhalter, the defendant, did willfully, unlawfully, feloniously, Kill Hayley Jade Buckhalter, a human being, by culpable negligence, contrary to and in violation of Section 97-3-47, of the Mississippi Code of 1972, as amended against the peace and dignity of the State of Mississippi.

First we have to determine whether an unborn child is considered a human being in Mississippi Code 97-3-47. Mississippi Code Section 97-3-37(1) defines an unborn child as a human being;

For purposes of the offenses enumerated in this subsection (1), the term "human being" includes an unborn child at every stage of gestation from conception until live birth and the term "unborn child" means a member of the species homo sapiens, at any stage of development, who is carried in the womb:

and Mississippi Code Section 97-3-37(j) includes;

Section 97-3-47, all other homicides;

an unborn child as being included in this definition of a human being for purposes of a

Manslaughter Charged under Mississippi Code 97-3-47.

The Defense argues that the Manslaughter must be by another and not by the mother of an unborn child. If an unborn child is defined as a human being by Mississippi Code 97-3-37 then the Mother's action would have to be by another because it is not by the unborn child.

The fact that the Legislature has considered legislation to change or amend the Criminal Law should not affect the ruling of this case. The Legislature has the option to make more specific laws to punish criminal conduct. Just because they considered legislation and did not pass the legislation does not mean that the criminal act was not already prohibited by another Statute.

The State must also prove that the Defendants' actions were Culpable Negligence. Culpable Negligence has been defined in *Shumpert v State*, 935 So.2d 962 (Miss.2006) as

Such gross negligence... as to evidence a wanton or reckless disregard for the safety of human life, or such an indifference to the consequences of an act under the surrounding circumstances as to render such conduct tantamount to wilfulness.

The State would submit that the Defendant's action of taking illegal drugs was Culpable Negligence under the facts in this Case.


The Defense is requesting this Court to find that the actions of the Defendant in this case were justified because she could have sought an abortion if she wanted to terminate the life of Hayley Jade Buckhalter and she would not have been subject to prosecution. The fact is that the Defendant did not seek an abortion but killed Hayley Jade Buckhalter by her Culpable Negligence, therefore what she could have done should not influence this Court in this Case.

Wherefore, the above premises considered, the State respectfully requests that after a hearing in this Cause an order denying the Defendant's Motion to Dismiss the Indictment would

Issue and allow the State to proceed to a Trial on the merits of this Case.

Dated this the 13th day of April, A.D. 2012.

Respectfully submitted,
State of Mississippi




Douglas E. Miller
Assistant District Attorney

CERTIFICATE OF SERVICE

I hereby certify that I have this date Faxed a true and eorrect copy of this Answer to Motion to Dismiss Indietment to Honorable K. C. Hightower at his Fax Number of 601-261-3411.

This the 13th day of April, A.D., 2012.



Douglas E. Miller